IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1937 of 1995

For Approval and Signature:

HON'BLE MS.JUSTICE H.N.DEVANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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ABBAS A KARBHARI

Versus

COLLECTOR ,GANDHINAGAR

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Appearance:

1. Special Civil Application No. 1937 of 1995

MR PJ VYAS for Petitioner No. 1

MR UR BHATT, AGP for Respondent No. 1-2

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CORAM : HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 25/03/2005

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has challenged the order dated 5th January 1995 passed by the Deputy

Secretary (Appeals), Revenue Department, State of Gujarat, rejecting the revision application filed by the petitioner and confirming the order dated 29th April, 1993 passed by the Collector, Gandhinagar.

2. By an order dated 28th January 1988, the petitioner was granted a plot of land being plot No.514/1 admeasuring 81 sq. mtrs. situated at Sector No.7 at Gandhinagar on certain terms and conditions. The said plot of land was granted to the petitioner in the capacity of a government servant, at concessional rate. The possession of the plot was handed over to the petitioner on 26th February 1988. At the time of handing over the possession, the petitioner had entered into an agreement (kabulatnama) in Form "HH" with respect to the user of the plot as well as other conditions. Under the conditions of grant, the land was to be used only for residential purpose, however, it was found that the petitioner had rented a part of the building constructed thereon to one Maksudbhai Kureshi, who was using the said premises for commercial purposes by running a Gas Agency in the name and style of Amy Gas Agency.

3. In view of the aforesaid breach, a show cause notice was issued to the petitioner on 9th July 1992, calling upon him to show cause as to why the land in question along with the construction thereon should not be forfeited without payment of compensation as per Condition No.7(a)(b) of the Agreement and Condition No.13 of Schedule II for breach of Conditions No.2 and 3 of the Kabulatnama / agreement and Conditions No.2 and 4 of the Schedule; and also as to why the penalty at the rate of 40 times the non-agricultural assessment should not be imposed under Section 62 of the Bombay Land Revenue Code and Rule 10 of the Gujarat Land Revenue Rules. Thereafter, after giving the petitioner an opportunity of hearing, the Collector, Gandhinagar, by an order dated 29th April 1993, held that there was a breach of the conditions of the Undertaking as well as conditions of Grant, and directed that the land allotted to the petitioner along with the superstructure thereon be forfeited without payment of compensation and be taken over by the State Government.

4. Being aggrieved by the order dated 29th April 1993 passed by the Collector, Gandhinagar, the petitioner approached the State Government by way of a revision application. The Deputy Secretary (Appeals), Revenue Department, State of Gujarat (hereinafter referred to as the Revisional Authority), in his order dated 5th January 1995, has observed that the petitioner is holding a

nontransferable job in the State Government and as such, had been granted a plot admeasuring 81 sq. mtrs. being plot No.514/1 in Sector No.7, Gandhinagar for residential purpose, at concessional rate. As per the conditions of grant, the petitioner was required to complete the construction within the specified time limit and was required to produce a Building Use Permission and thereafter, use the same only for residential purpose. However, the petitioner had rented the premises to one Amy Gas Agency for commercial purpose. That the petitioner had admitted the fact that he had given the building for being used by Amy Gas Agency. That upon perusal of the panchnama, which was part of the record, it was obvious that the building had been used for commercial purpose, and upon perusal of the pursis tendered by the petitioner's advocate, it was clear that Amy Gas Agency was still occupying the said premises. The advocate had represented that Amy Gas Agency had been granted other land by the State Government and that the premises of the petitioner would be vacated in a month or so. Hence, it was clear that the Gas Agency was still continuing business in the premises of the petitioner. Considering the aforesaid facts, the Deputy Secretary formed an opinion that the order of the Collector, considering the breach of condition, was just and proper and did not call for any intervention, and accordingly, he confirmed the order of the Collector and rejected the revision application filed by the petitioner.

5. Mr.P.J.Vyas, the learned Counsel for the petitioner has submitted that there was no serious breach of conditions. That as can be seen from the order of the Collector, the petitioner had permitted a relative to use the premises for some time, and that the petitioner had not made any profit out of the same. It was also submitted that only part of the premises were permitted to be used by the said Maksudbhai Kureshi, that too only for office purpose for booking gas cylinders. It was contended that the Collector had relied upon the report of the Circle Inspector who made the panchnama, as well as a statement of Shri Kureshi, however, there was no reference to the same in the show cause notice. That the petitioner had not been given an opportunity to meet with the panchnama in question as well as the aforesaid statement of Shri Kureshi, hence, the impugned order of the Collector was violative of the principles of natural justice.

5.2 Learned Counsel argued that for breach of condition the government could impose such reasonable fine as it deems fit, however, it was not open to the

government to forfeit the land with the building thereon. It was submitted that in any event the breach was not so grave as to entail forfeiture of the plot without payment of compensation. It was submitted that the petitioner has obtained a loan for the purpose of constructing the house and had spent his entire life's savings for the said purpose. Learned Counsel drew the attention of the Court to the facts stated in paragraph 5(h) of the petition, wherein several instances of more serious breaches had been cited and submitted that no action had been taken against the said persons, and that the petitioner had been singled out, which amounted to violation of the petitioner's fundamental rights under Article 14 and 19 of the Constitution of India. It was also submitted that an application for Building Use Permission had been made but the certificate had not been received. It was submitted that the Revisional authority had failed to apply his mind to the aforesaid facts while confirming the order of the Collector.

5.3 Learned Counsel also submitted that the order of forfeiture along with superstructure without payment of compensation was too harsh in the facts and circumstances of the case. It was submitted that the Deputy Secretary (Appeals) has not applied his mind to the question of penalty and has confirmed the order of the Collector without independently considering as to whether the penalty was commensurate with the breach.

6. Mr.U.R.Bhatt, learned Assistant Government Pleader appeared on behalf of the respondents and supported the orders passed by the respondent authorities.

7. In the facts of the present case, it is an admitted position that there was a breach of condition as the petitioner does not dispute the fact that he had permitted the premises or part thereof, to be used by Shri Maksudbhai Kureshi, who was having a gas agency in the name of Amy Gas Agency for a temporary period for his office, pending allotment of plot to said Shri Kureshi, by the government. It is also not disputed that at the relevant time the petitioner had not obtained building use permission for the said premises. Hence, there cannot be said to be any infirmity in the finding as regards breach of conditions in that the petitioner had permitted the said Shri Kureshi to use the premises for the purpose of running a Gas Agency as well as other conditions of the Agreement and the schedule thereto.

7.1 However, insofar as the extent of breach is

concerned, as can be seen there is a specific ground raised in the petition regarding the petitioner not having been given an opportunity to meet with the panchnama as well as the statement of Mr.Kureshi. An affidavit in reply has been filed on behalf of the respondents, however, the said contention has not been dealt with. Thus, to the extent that the Collector has recorded a finding that the premises had been given on rent to Shri Kureshi, which was seriously disputed by the petitioner, it appears that the petitioner has not been granted sufficient opportunity of hearing.

7.2 The petitioner has raised specific contentions in the petition as regards imposition of fine at 40 times n.a. assessment in cases of similarly situated persons which have not been dealt with in the affidavit in reply filed on behalf of the respondents. The averments made in paragraph 5(h) of the petition are also not dealt with. The contention that for breach of condition the government could impose such reasonable fine as it deems fit, however, it was not open to the government to forfeit the land with the building thereon has also not been dealt with.

7.3 Also upon perusal of the order of the Revisional authority, it can be seen that it had also been urged that in other cases similar breaches had been regularized upon payment of fine and it was prayed that the petitioner be afforded a similar treatment. However, it appears that the said authority has not independently applied his mind to the question of penalty keeping in mind the extent of breach, but has simpliciter confirmed the order of the Collector without examining as to whether the penalty is commensurate with the breach alleged. No reasons are stated as to why a lesser penalty as prayed for by the petitioner should not be imposed.

8. In the circumstances, it is held that the impugned order insofar as the same confirms the finding that the petitioner had given the premises on rent is quashed and set aside as being violative of the principles of natural justice. The impugned order directing the forfeiture of the plot along with the construction thereon without payment of compensation is also quashed and set aside and the matter is remanded to the Revisional authority to decide the question of the penalty afresh and to pass a reasoned order after considering the various contentions raised by the petitioner and after affording the petitioner an opportunity of hearing.

9. In the result, the petition is allowed to the aforesaid extent. Rule is made absolute accordingly. There shall be no order as to costs.

[H.N.DEVANI, J.]

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